

REMARKS

I. Status of the Application.

Claims 1-24 are pending in this application. In a non-final office action dated December 28, 2009, Examiner Greece (a) rejected claim 24 under 35 U.S.C. §112, second paragraph as being indefinite; (b) rejected claims 1-7, 9-14, and 17-19 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2002/0186346 to Stantz et al. ("Stantz"); (c) rejected claims 8 and 15 under 35 U.S.C. §103(a) as being unpatentable over Stantz in view of U.S. Patent Publication No. 2004/0054358 to Cox et al ("Cox"); (d) rejected claim 16 under 35 U.S.C. §103(a) as being unpatentable over Stantz in view of U.S. Patent 5,777,719 to Williams et al. ("Williams"); and (e) rejected claims 20-23 under 35 U.S.C. §103(a) as being unpatentable over Stantz. In this response, Applicants (a) amend claims 1 and 9, (b) add new claims 25 and 26, (c) cancel claims 4 and 24, and (d) respectfully traverse the examiner's rejections.

II. Interview Summary

On March 25, 2010, the undersigned, Attorney Homer Faucett, Doug Bodde and Arthur Bradley conducted an Examiner's interview with Examiner James Greece. The Applicants would like to thank the Examiners for his time and assistance in resolving the outstanding prosecution matters. During this interview, the participants discussed the Stantz reference and points of differentiation between Stantz and the pending claims. Examiner Greece took the position that points of differentiation were a matter of interpretation and would need to be made in an amendment. Further, the undersigned questioned Examiner Greece as to the allowability of claim 24 following the resolution of the indefiniteness-based rejection. In response, Examiner Greece noted that claim 24 could not be examined as the acronyms were not clear, and would need to be examined prior to allowability. While the undersigned and Attorney Faucett argued

that the acronyms of claim 24 were clear in light of the specification, which clearly defined these acronyms, and as such should have been examined, the Examiner was unmoved. At the conclusion of this interview no agreement was reached among the participants

III. No New Matter is added

Applicants note that the amendments to claims 1 and 9, and the introduction of new claims 25 and 26 do not introduce new matter and are introduced solely to clarify the invention as originally disclosed. Support for these amendments and new claims may be filed in the Application as originally filed. Accordingly, Applicants request acceptance and consideration of the amended claims and new claims.

III. Amended Claim 24 is not indefinite

Applicants herein note that the rejection of claim 24 is moot given the cancellation of claim 24. Accordingly, Applicants respectfully request that the rejection of claim 24 be withdrawn.

IV. Claims 1-7, 9-14, and 17-19 are Not Anticipated by Stantz

Amended claims 1 and 9 contain limitations which are not present in Stantz. In order to establish that the claims are anticipated by a reference, the reference must teach every element of the claim. MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Indeed, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." MPEP 2131, *quoting Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989), emphasis added. Applicants respectfully submit that Stantz does not teach or suggest any one of the "metric[s] of optimized image quality" as claimed in claims 1 or 9. Further, Stantz does not

teach or suggest "iteratively modifying the level of spherical and cylindrical defocus of the abberometric data" and "computing the modified objective image quality metric from the modified abberometric data" of claim 1. Moreover, Stantz does not teach or suggest the repetition of the iteratively modifying step and subsequent computing step as required in claim 1. Lastly, Stantz does not teach or suggest the limitation "computing an ideal optic prescription using the metric of optimized image quality," as is required in claim 9. Therefore, since Stantz does not teach all of the limitations present in claims 1 or 9, Stantz does not anticipate these claims. Further, since claims 2-3, 5-7, 10-14, and 17-19 each depend from, and have the same limitations as, claims 1 or 9, Stantz does not anticipate any of these claims. Additionally, Applicants note that the rejection of claim 4 is moot given the cancellation of claim 4 herein. Accordingly, Applicants respectfully request that the rejection of claims 1-7, 10-14, and 17-19 be withdrawn.

V. Claims 8, 15, and 16 are Not Obvious in View of the Stantz Reference in Light of the Cox Reference or the Williams Patent

Applicants respectfully note that Stantz, Cox, and Williams, either singly or in combination, do not teach or suggest all of the limitations of claims 8, 15, and 16. To show a prima facie case of obviousness "the cited references must contain all of the limitations of the claims." *KSR Int'l Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007); MPEP §2143. Since each of claims 8, 15, and 16 depend from claims 1 or 9, they also have all of the limitations of claims 1 or 9. Accordingly, since Applicants have shown above that Stantz above does not teach or suggest all of the limitations of claims 1 or 9 (*See* Section IV) which is relied upon in the Office Action as prior art, Applicants respectfully submit that Stantz, Cox, or Williams either singly or in combination do not teach or suggest all of the limitations of claims 8, 15, or 16. Accordingly,

Applicants respectfully request that the rejection of claims 8, 15, or 16 as being unpatentable under 35 U.S.C. §103(a) be withdrawn.

VI. Applicants petition for an extension of time.

Applicants respectfully petition for an extension of time of one (2) month, under 37 C.F.R. § 1.7(a) and 1.136(a), to May 28, 2010, based on the original December 18, 2009 date of the Office Action mailed for the present Application. Applicants shall authorize payment for this extension in the amount of \$245 (Small Entity) via credit card at the time of electronically filing of the present response.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Applicants have made a patentable contribution to the art and that this response places all of the pending claims of the above identified application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Should the Examiner find that Applicants arguments do not overcome the rejections of the Office Action, Examiner is encouraged to contact the undersigned to resolve any remaining disputed issues.

Applicants electronically submit herewith payment in the amount of \$245.00 in satisfaction of the fees associated with the two month extension of time for a small entity. In the event that Applicants have inadvertently overlooked the need for an extension of time or payment of an additional fee, Applicants conditionally petition therefore, and authorize any fee deficiency to be charged to deposit account 09-0007. Please refer to File No. P00873-US-01 (16584.0023) when making a charge or credit against the deposit account.

Sincerely,

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